

Customer No.: 31561  
Application No: 10/711,511  
Docket No.:13040-US-PA

### REMARKS

#### Present Status of Patent Application

This is a full and timely response to the outstanding non-final Office Action mailed on August 16, 2005. The Examiner rejected claims 1-5, 8, 15-17 under 35 U.S.C. 102(b) as being anticipated by Lin (USP 6,249,022). *See* Office Action at Pages 2-3. The Examiner also rejected claims 10-13 under 35 U.S.C. 103(a) as being unpatentable over Lin (USP 2004/0207007) in view of Lin '022 and rejected claims 6-7 and 18 as being unpatentable over Lin '022 and further in view of Lin '007. *See id* at Pages 4-6. Finally, the Examiner rejected claims 1-18 as being unpatentable over claims 1-17 of Chang (USP 6,635,533) under the judicially created doctrine of obviousness-type double patenting. *See id.* at Page 3. However, the Examiner has considered claims 9 and 14 to be allowable for the reasons of "forming a pair of dielectric spacers on sidewalls of the conductive structure before removing portions of the third dielectric layer, the second dielectric layer and first dielectric layer not covered by the conductive structure." *See id.* at Page 6.

Upon entry of the amendments in this response, claims 1-8, 10-13, and 15-17 are pending in the present application. More specifically, claims 9, 14, and 18 have been canceled and allowable features have been respectively incorporated into the independent claims 1, 10, and 15 respectively to assure the allowability of these independent claims. *See infra* at Pages 2-4. In addition, the dependent claims 5 and 7-8 have been amended so that claims 5 and 7 become

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dependent on claim 3 and claim 8 becomes dependent on claim 1. *See infra* at Pages 2-3. It is believed that these amendments and additions add no new matter to the present application.

In view of the amendments to claims 1, 10 and 18, claims 1 and 10 are respectively incorporated with the allowable features of claims 9 and 14, which renders rejections set forth to claims 1 and 10 are allowable. Claim 18 is amended to incorporated with the features of "forming a pair of dielectric spacers on sidewalls of the gate, wherein a portion of the top oxide layer is exposed, and removing the exposed top oxide layer, the patterned dielectric layer and the pad oxide layer underneath", which also patentable over prior art of record. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

#### **Response to Objections of Double Patenting**

The Examiner also rejected claims 1-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of Chang (USP 6,635,533) issued to the Applicants. A Terminal Disclaimer is filed with this responded. Therefore, it is believed that the rejection under double-patenting is overcome.

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**CONCLUSION**

For at least the foregoing reasons, it is believed that the presently pending claims 1-8, 10-13, and 15-17 are in proper condition for allowance. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

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Respectfully submitted,

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